IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-02-2005

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 2857 of 2003
and
C.M.P. No. 21508 of 2003
-o-

1. T.S. Sridharan
2. R. Suresh Kumar .. Petitioners/ Petitioners

Versus

1. M.F. Simon
2. Fedrick Simon .. Respondents/ Respondents

Revision under Section 115 of CPC against the Order dated 10-11-2003 made in I.A. No. 12952 of 2002 in O.S. No. 1540 of 1997 on the file of IIIrd Assistant City Civil Court, Madras.

For Petitioners : Mr. T.R. Rajagopalan, Senior Counsel
for Mr. Irwin Aaron

For Respondent : Mr. N. Rajan for caveator

ORDER

The 7th and 8th defendants are the revision petitioners herein, who have filed this revision petition against the order of dismissal of the application filed by them under Order VII Rule 11 CPC in I.A. No. 12952 of 2002 in O.S. No. 1540 of 1997 by the learned IIIrd Assistant City Civil Judge, Madras.

2. The respondents 1 and 2 herein have filed the above said suit i.e., O.S. No. 1540 of 1997 for the below mentioned reliefs.

a) for a declaration to declare that the first plaintiff is the co-founder of the Social Welfare Centre Johan Maasbach World Mission, along with the second defendant at No.10 (Old No.40), Arcot Road, Saligramam, Madras-93;

b) for a declaration that the first plaintiff and his family members particularly the second plaintiff herein, are entitled to administer the Social Welfare Centre Johan Maasbach World Mission at No.10 (Old No.40), Arcot Road, Saligramam, Madras-93 and its properties, scheduled in the plaint;

c) for a declaration that the registration of the society in the name and style of Social Welfare Centre Johan Maasbach World Mission, dated 21-02-1976 (S.No.33/76) is null and void;

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d) For a permanent injunction restraining the defendants 5 to 9, their agents and their men, for interfering with the affairs of the Social Welfare Centre Johan Maasbach World Mission, at No.10 (Old No.40), Arcot Road, Saligramam, Madras-93 and for costs and other reliefs

3. The petitioners herein have filed I.A. No. 12952 of 2002 under Order VII Rule 11 of C.P.C. for rejection of the plaint on the ground that the relief (b) and (c) sought for in the suit relates to declaration with respect to suit schedule mentioned immovable properties and it's value is not less than Rs.3,00,00,000/- and the court fee payable thereon would be Rs.1,50,00,000/- being 50% of the value thereof; whereas, the respondents have filed the suit, valuing prayer (b) and (c) of the suit at Rs.400/- each and in view of payment of insufficient court fee, the plaint is liable to be rejected. The trial court, after giving opportunity to both the sides dismissed the said I.A. No. 12952 of 2002.

4. Mr. T.R. Rajagopalan, learned Senior counsel appearing for the petitioners submits that the trial court erred in dismissing the application on the erroneous ground that the reliefs claimed in the suit were incalculable valuation and the valuation adopted and court fee paid by the respondents is correct; that the respondents are not office bearers of the society, while so, for claiming administration of the society and its properties, the respondents ought to have paid court fee to the extent of 50% of the value of the property; that the plaint is liable to be rejected for non-payment of proper court fee; though the prayer appears in respect of intangible right, it is nothing but claiming right in immovable property; that the trial court valued the property at Rs.15,08,33,000/- but has erroneously held that payment of court fee paid under Section 25 (d) of the Court Fee Act is correct, and in view of the fact that the property values more than Rs.10,00,00,000/-, the trial court has no pecuniary jurisdiction to entertain the suit and this fact was also lost sight of by the trial court. In support of this contention, the learned Senior counsel relied on the below mentioned judgments.

i) (Kattiya Pillai and another Vs. Ramaswamia Pillai and others) AIR 1929 Madras 396 @ 398 a Division Bench of this Court held thus:-

"The plaintiff asks that the will may be declared void. That section further enacts, that in such a suit, the Court may in its discretion, adjudge the instrument void or voidable and order it to be delivered up and cancelled. In a suit rightly framed under that section, it is the Court's function to order the instrument to be cancelled. It is not a part of the prayer in the plaint. Then again, the section goes on to say that if the instrument is one that has been registered under the Registration Act, the Court shall send a copy of its decree to the Registeration Officer,who shall note in his book that his instrument has been so cancelled. This again, is not a relief which it is the duty of the plaintiff to sue for, but it is the duty of the Court to grant. Now,

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looking at the present plaint, it is thus clear that the prayer relating to (i) the cancellation of the will and (2) the cancellation of the regisration is unnecessary and superfluous.

In deciding what the proper Court fee payable is, the Court must have regard to the substance of the thing and not the mere form in which the relief has been prayer for."

ii) (Gnanambai Ammal vs. Kannappa Pillai and others) 1959 (1) MLJ Madras Page No.355 wherein it was held that 'it is also quiet true that in order to determine the class under which a suit falls for the purpose of Court fee, the substance of the relief as disclosed in the plaint taken as a whole should be looked into and not the form of the prayer in which the relief is cast'.

iii) (The Kullitalai Bank Ltd., rep. by its Managing Director S. Anna Durai vs. Vedavalli Ammal and others) 1962 Volume 76 Law Weekly Page No.28 wherein this Court held that 'The only question therefore is whether the instant plaints can be regarded as asking for reliefs with reference to immovable properties. As I said, both the averments and the nature of relief sought leave no room for doubt that it is essential for the plaintiffs to get the reliefs they want, to decide the question of title relating to the properties. Without deciding that question, it is impossible to dispose of the suits.

iv) (Shamsher Singh v. Rajinder Prashad and others) (1973) 2 SCC 524 wherein it was held by the Honourable Supreme Court thus:-

The decision of the Lahore High Court in Prithvi Raj v. R.C. Ralli, is exactly in point. It was held that in a suit by the son for a declaration that the mortgage decree obtained against his father was not binding upon him it is essential for the son to ask for setting aside of the decree as a consequence of the declaration claimed and to pay ad valorem court-fee under Section 7(iv)(c). It was pointed out that a decree against the father is a good decree against the son and unless the decree is set aside it would remain executable against the son, and it was essential for the son to ask for setting aside the decree. In Vinayakrao v. Mankunwarbai, it was held that in a suit by the son for a declaration that decree against the father does not affect his interests in the family property, consequential relief is involved and ad valorem court-fee would be necessary.

v) (J. Kasthuri and others Vs. Seth Ghanshamdas Vonsimal Deva Bank) 1979 (2) MLJ Page No.11 wherein a learned Single Judge of this Court held in para-4 thus:-

"4. ...There can be no doubt whatever that for the purpose of determining the court-fee payable, it is the substance of the relief that a plaintiff prays for that has to be taken into account and not the technical form of the prayer. If it is to be other wise, mere astuteness and ingenuity of the person drafting the plaint will have the effect of not only camouflaging and disguising the real relief which a plaintiff claims in a suit but also nullifying and defeating the provisions of law dealing with

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the payment of court fee based on the nature of the relief litigants seek in a Court of law."

vi) (M. Radhakrishnan Vs. M. Nanda Kumar) 2002 (3) CTC 154 wherein it was held in Para-9 thus:-

"It is settled law that the Court, in deciding the question of Court fee, should look into the allegations in the plaint to see as to what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. The Courts have to be, not only vigilant and read between the lines with a view to arrest the tendency of the litigant to under-value the reliefs, and to pay the minimum Court fee and to obtain the substantial relief, but also ensure the State does not lose revenue. This principle has been emphasised by the Supreme Court reported in (Shamsher Singh Vs. Rajinder Prasad and others) AIR 1973 SC 2384.

5. Mr. Rajan, learned counsel for the respondents submit that the relief claimed in the suit pertains to intangible property and not immovable property owned by the society, hence the court fee paid under Section 21 (d) of the Court Fee Act is perfectly valid; that the respondents are not claiming any title to the plaint schedule mentioned property in their individual capacity but only praying for a declaration that they are entitled to administer the society and it's properties and prayed for dismissal of the revision petition. The learned counsel appearing for the respondents relied on the below mentioned decisions in support of his case:-

i) In re. Rajah K.J.V. Naidu - AIR (33) 1946 Madras 235 wherein it was held that 'The prima facie interpretation on the expression 'the relief sought is with reference to any immovable property' in the proviso to Sec.7 (iv) (c) inserted in the Court-fees Act by Madras Act, 5 (V) of 1922, is that the dispute should, in some sense, relates to the title to immovable property. A suit for a declaration that the plaintifs have certain customary and mamool rights viz., to graze cuttle, to take leaves of manure, to cut and take wood required for fuel and other building and domestic purposes, etc., all free of charge from a forest area belonging to another, not being a suit relating to any title to immovable property falls under S.7 (iv) (e) and not under S.7 (iv) (c) and the Madras Proviso does not apply to such a suit.

ii) (M. Shahul Hameed vs. Kanda Iyer and another) 1967 (2) MLJ 536 wherein it was held thus:-

"Regarding the second contention of the learned counsel for the petitioner that Section 25 (d) of the Court-fees Act has no application and that Section 25 (a) or (b) is only attracted in the instant case, also appears to be untenable. It has been repeatedly held by our Court that Section 25 (d) or 25 (b) dealt with rights in immovable property or tangible rights where substantial questions as to the title of immovable property is involved. Section 25 (d) on the other hand would apply where no

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investigation is necessary regarding the title of the property but the adjudication relates to intangible rights concerning such property".

iii) (Venkatakrishna Reddiar and others vs. Swamikannu Goundar and others) AIR 1972 Madras 129 wherein this Court held in para-6 and 7 thus:-

"6. But having regard to the manner in which the expression 'with reference to any immovable property' in the proviso to Section 7 (iv) (c) of the Court-Fees Act of 1870 has been interpreted by this Court, it is reasonable to infer that the legislature in using the same expression in Section 25 (b) of the present Court-fees Act intended to give the same meaning to the expression. In this view, the suit claim would clearly fall under Section 25 (d) of the Act.

7. Section 7 of the Act provides for determination of the market value. There is nothing in Section 7 of the Act for determining the market value of easements or profits a prendre, or other benefits arising out of land. There was therefore no justification for the lower court in arbitrarily assessing the market value of the suit claim in respect of the fishery and long grass produce at 20 or 30 times the alleged annual income. It should be noted that the assessment of market value on the basis of capitalised value of the income is only one mode of valuation. Even if the case fell under Section 25 (b) of the Act, the learned District Munsif should have proceeded to take evidence and ascertain market value of the suit claim as the question involved jurisdiction of the Court. But in view of my finding that the claim falls under Section 25 (d) of the Act, the Court-fee has to be computed on the amount at which the relief sought is valued in the plaint. The decision of the learned District Munsif prior to remand that the suit falls under Section 25 (d) of the Madras Court-Fees Act of 1955 and that the suit has been properly valued for the purpose of court-fee and jurisdiction is correct and it is restored and the orders of the court below passed after remand are set aside and the suit is remanded to the trial court for disposal according to law."

iv) (Lakshmi Ammal vs. K.M. Madhavakrishnan and others) AIR 1978 Supreme Court 1607 wherein it was held in para-3 thus:-

"3. In this particular case there is hardly any difficulty in holding that the plaintiff in para 14 of the plaint has clearly alleged that she is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased, Paramayee. Obviously, the court fee that is payable is as she has claimed, namely under Section 37(2) which corresponds to Article 17(b) of the Central Act, which is the predecessor legislation on the subject. We allow the appeal and send the case back to the trial court and direct that Court to proceed with the suit expeditiously. We make it clear that our decision on the question of court fee does not have any implications on the merits, including the validity or otherwise of the Will. No costs.

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6. The provisions of Tamil Nadu Court Fee and Suit Valuations Act has to be understood in its natural and ordinary sense. For various classes of suits, a special mode of valuation is prescribed and it is the value arrived at in that mode, which is the determining factor for calculation of court fees. In some cases, an artificial method of computation of value is prescribed and this is commonly called the statutory value. In some cases, where it is not easy to assess the value of subject matter of the suit, the plaintiff has right to state it's value and this is commonly called as notional value. In some other cases, the value prescribes correspond to be the real value of the subject matter.

7. Section 10 to 20 of the Court Fee Act contains detailed provisions relating to the procedure to be followed for determining and calculating the court fee on plaints, memoranda of appeal etc., It has been the obligation of the Courts to give decision on the question of court fee tentatively when registering the plaint and definitely after hearing both sides.

8. Sub-section 2 of Section 12 gives a new statutory right to the defendant to raise objections to the adequacy of court fee paid by the plaintiff. The question of Court fee is primarily is a matter between the Government and the party liable to pay it. It should be noted that the defendants cannot be interested in collection of proper court fee and are interested in obstructing the prosecution of the suit, if possible. The provisions of this Act is applicable even where no question of jurisdiction is involved as in the case of objections raised to court fee in a suit in a Court of unlimited jurisdiction.

9. It is settled Law that the allegations in the plaint alone are to be considered and not the statement made by the defendants in the written statement, however, the Courts are entitled to determine the substance of the claim as distinguished from the form in which the reliefs were cast by vigilant and read between the lines with a view to arrest the tendency of the litigants to undervalue the relief. If there is any undervaluation of the subject matter of the suit. Section 12 (5) directs that all questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement by a defendant shall be heard and decided before evidence is recorded affecting the merits of the claim, which is a healthy provision.

10. The Honourable Supreme Court, in the decision reported in (Meenakshisundaram Chettiar Vs. Venkatachalam Chettiar) AIR 1979 Supreme Court 989 held that under Section 35 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955, the plaintiff should give a fair estimate of the amount for which he sues. If on the materials available before it the Court is satisfied with the value of relief as estimated by the plaintiff in a suit is undervalued, the plaint is liable to be rejected under Rule 11 (b) of Order VII CPC.

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11. NO doubt, from the above discussion relating to the relevant provisions of Tamil Nadu Court Fee and Suit Valuation Act and also Rule 11 (b) of Order VII CPC, it is clear that if the relief claimed is undervalued, the plaint is liable to be rejected.

12. Section 25 of the Tamil Nadu Court Fee and Suit Valuation Act runs as follows:-

"25. Suits for declaration – In a suit for a declaratory decree or order, whether with or without consequential relief not falling under Section 26-

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees one thousand and five hundred, whichever is higher

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher.

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees two thousand, whichever is higher

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees one thousand, whichever is higher."

13. This section deals with suit for declaration and suit for declaration and consequential relief. The position about the suits for declaratory decree has been simplified by this Act. Section 25 makes no distinction between a case where a consequential relief is claimed and a case where no consequential relief is claimed except where consequential relief is injunction with reference to immovable property.

14. Suits for declaration are governed by Section 34 of Special Relief Act 47 of 1963. When there is some legal obstacle, which has to be removed before consequential relief can be granted, it is incumbent upon the plaintiff to pray for declaration which will have the effect of removing the obstacle.

15. Section 25 (d) of the Court Fee Act covers all cases of declaration with or without consequential relief, not covered by sub-clauses (a), (b) and (c) and whether the subject matter is or is not capable of valuation. Where a suit falls under clause (d), discussion on the question whether the relief is capable of valuation is irrelevant. Clause (a) and (b) of Section 25 deals with tangible rights and clause (d) deals with intangible rights.

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16. In the decision reported in (M. Shahul Hameed vs. Kanda Iyer and another) 1967 (2) MLJ 536 mentioned supra, this Court held that when there is no adjudication regarding title, but adjudication regarding intangible right only, Section 25 (d) of the Court Fee Act is applicable.

17. In this context, it is worthy to refer to the decision of this Court reported in (Dr. Arthur Nathanial and another vs. Dr. R.P. Nathanial) 1962-II MLJ Volume 105 Page No.420 wherein it was held thus:-

"This civil Revision Petition arises from the finding of the District Munsif of Vellore in O.S. No. 297 of 1959 holding that the suit had been properly valued under Section 25 (d) of the Madras Court Fees and Suits Valuation Act of 1955. The defendant is the petitioner. The respondent instituted a suit for declaration of his right to the hospital and dispensary run under the name and style of "The Popular Pharmacy and Nursing Home" and for an injunction restraining the petitioners from interfering with his possession of the hospital and practice therein or using the medicines and setting up a rival practice to his detriment. The petitioners are the son and daughter-in-law of the respondent. It is admitted that the premises of the pharmacy which is situate in No.29, Filter Bed Road, Vellore Town does not belong to either of the parties. The right claimed in the plaint is therefore an intangible one relating to the pharmacy and nursing home i.e., the business or profession carried on by the petitioner. It is evident that Section 25 (a) of the Court Fees Act cannot apply to the case as it relates to tangible property. Clause (d) of that section will govern the case whether the subject matter of the suit is capable of valuation or not. The learned District Munsif has held that it is only the later clause that will apply and I am of opinion that is correct.

The Civil Revision Petition is dismissed with costs.

In my considered view, the above said decision squarely applicable to the facts of the instant case.

18. The Honourable Supreme Court, in the decision reported in (Lakshmi Ammal vs. K.M. Madhavakrishnan and others) AIR 1978 Supreme Court 1607 held in para-2 thus:-

"2. It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court-fee, leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, court-fee, if it seriously restricts the rights of a person to seek his remedies in Courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone be paid.

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In the above case, the Honourable Supreme Court held that access to justice is the basis of the legal system. Where there is a doubt, if it is reasonable, the benefit must go him who says that the lesser court fee alone be paid.

19. In the case on hand, a suit for declaration of administration of the society has been sought for by the plaintiffs and for consequential relief that the defendants have no right to interfere with the same. The trial court has found that the said case falls within Section 25 (d) of the Tamil Nadu Court Fee and Suit Valuations Act, 1955. The plaintiffs are also in possession of the property or certain portion of the property. It is not in dispute that the property, which is the subject matter of the suit belonged only to the society, but not belonged to either of the parties. Hence, the right claimed in the plaint is an intangible one, relating to administration of the property. Once in a suit, a prayer for declaration or any other consequential relief is sought for in respect of intangible right, it will be governed by clause (d) and it does not attract clause (a) or (b) or (c) of Section 25.

20. In this case, no investigation is necessary regarding the title of the property but adjudication relating to intangible right is required. The trial court has rightly held that clause (d) of Section 25 of the Court Fee Act is applicable to the reliefs (b) and (c) of the suit.

21. Hence, I confirm the judgment and decree of the trial court. The Civil Revision Petition is dismissed without costs. Connected CMP is closed. Considering that the suit is of the year 1997, I direct the trial court to dispose of the suit on merits, uninfluenced by any of the observations made by this Court, within a period of three months from the date of receipt of a copy of this order.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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